IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISCELLANEOUS PETITION NO.2 OF 2004

V.Sithapathy ...Petitioner

.....

Ms.V.C.Khatri i/b Vijay Kumar & Co. for Petitioner.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 29, 2005.

P.C.

1. This Petition is filed by the family friend and guardian of minor Master Amit Manoj Tolani. Both the parents of the minor have settled abroad. The minor was under the care of his grandfather. The grandfather has also shifted to Indonesia for the good. The minor is presently in Singapore. The grandfather of the minor had purchased two flats at Kandivli (East) in the name of the minor. As all the family members of the minor have shifted permanently outside India, including the minor, the Petitioner, who is the

family friend and guardian of the minor, has been authorised to file the present Petition by the grandfather of the minor. As mentioned earlier, the two flats were purchased by the grandfather of the minor in the name of the minor.

2. Inspite of notice, no objection has been received from any quarter. In the circumstances, Petition deserves to be allowed. However, from the Petition, it appears that the Petitioner had agreed to dispose of the two flats in favour of third party for a total consideration of Rs.15,00,000/- (Rupees Fifteen Lakhs). That agreement was arrived at in February 2004.

3. Since the Court is now inclined to allow this Petition in favour of the Petitioner herein, in my view, it is necessary that the consideration amount in respect of two flats will have to be fixed commensurately with the prevailing market price. For that purpose, valuer M/s.Nadkarni & Co. was appointed to submit valuation report. The report submitted by M/s.Nadkarni & Co., valuers, shows the fair market price of the two flats to be

Rs.19,48,000/- (Rupees Nineteen Lakhs Forty-eight Thousand).

4. In this backdrop, the Petitioner was called upon to persuade the prospective buyers to enhance the consideration amount of the two flats, which will mitigate the situation and secure the interest of the minor, as the sale proceeds will have to be invested for the benefit of the minor.

5. In response thereto, the Petitioner has negotiated with the prospective buyers. Initially, the prospective buyers were inclined to offer maximum amount of Rs.18,00,000/- (Rupees Eighteen Lakhs), however, on insistence of the Court, the prospective buyers have now agreed to complete the transaction for consideration of Rs.19,00,000/- (Rupees Nineteen Lakhs) in respect of the two flats.

6. Counsel for the Petitioner submits that the Petitioner has personally discussed this aspect with the prospective buyers and they have given their consent for the proposed order.

7. Accordingly, this Petition is made absolute in terms of prayer clauses (a), (b) and (c), on condition that the aggregate amount for the sale of the two flats will stand altered to Rs.19,00,000/- (Rupees Nineteen Lakhs) for the two flats.

8. In other words, the Petitioner is authorised to complete the sale in respect of the two flats with the prospective buyers Mrs.Usha Yogesh & M.G.Yogeshwarnath and Mr.Punit Agarwal & Ms.Kanika Agarwal respectively. The total consideration for both the flats is specified at Rs.19,00,000/- (Rupees Nineteen Lakhs) to be apportioned against respective flats commensurately.

9. The Petitioner will deposit the sale proceeds with the Accounts Officer, who in turn, shall invest the same in such manner that the liability of capital gains is taken care of. For example, in appropriate capital gains tax saving bonds. If the bond would mature before the minor

attains majority, the amount received on maturity of the bond, be reinvested in a fixed deposit in Nationalised Bank for such period, till the minor attains majority.

10. It will be open to the Petitioner to apply for appropriate relief, as may be advised, which will be considered on its own merits, after the maturity of the deposits made out of the sale proceeds under capital gains account.

A.M.KHANWILKAR, J.